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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,661	01/26/2004	Jean-Pierre Lalonde	21819-42CONCON	8801
7590	07/13/2005		EXAMINER	
JOHN CHRISTOPHER CHRISTOPHER & WEISBERG, P.A. EAST LAS OLAS BOULEVARD SUITE 2040 FORT LAUDERDALE, FL 33301			ROLLINS, ROSILAND STACIE	
			ART UNIT	PAPER NUMBER
			3739	
			DATE MAILED: 07/13/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

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OIPE/IAP

JUL 28 2005

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/764,661	LALONDE ET AL.
Examiner	Art Unit	
Rosiland S. Rollins	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 26 January 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1,2 and 14 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,2 and 14 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date ~~4/10/04~~ 4/10/04

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Dobak, III et al. (US 5758505). Dobak, III et al. disclose a cryoablation system comprising a cryotreatment catheter (figure 35) and a coolant console (inherent) having an inlet line (110) a reservoir of phase change coolant, a supply line (210) for supplying phase change coolant, a first means (130) coupled to the supply line for providing the phase change coolant from the reservoir at elevated pressure along an the inlet line to a the cryotreatment catheter, a second means for recovering the phase change coolant (230) from the cryotreatment catheter and raising its pressure; the first and second means, a portion of the supply line, and the crvotreatment catheter forming a supply loop external to the reservoirs the supply loop (figure 33) passing through the cryotreatment catheter, the first means being arranged in heat exchange communication with the supply line to condition the phase change coolant before it reaches the catheter along the inlet line so as to achieve effective cooling regimens by controlling phase change coolant provided along the inlet line while continuously recovering and recalculating expended coolant from the second means.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6682525. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the elements of claims 1 and 2 are to be found in claim 1. The difference between claims 1 and 2 of the application and claim 11 of the patent lies in the fact that the patent claim includes many more elements and is thus much more specific. Thus the invention of claim 1 is in effect a "species" of the "generic" invention of claims 1 and 2. It has been held that the generic invention is "anticipated" by the "species". See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since claims 1 and 2 are anticipated by claim 1 of the patent, it is not patentably distinct from claim 1.

Claim 14 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 6 of U.S. Patent No. 6383180. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the elements of claim 14 are to be found in claim 6. The

difference between claim 14 of the application and claim 6 of the patent lies in the fact that the patent claim includes many more elements and is thus much more specific.

Thus the invention of claim 6 is in effect a "species" of the "generic" invention of claim 14. It has been held that the generic invention is "anticipated" by the "species". See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since claim 14 is anticipated by claim 6 of the patent, it is not patentably distinct from claim 14.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosiland S. Rollins whose telephone number is (571) 272-4772. The examiner can normally be reached on Mon.-Fri. 9:00 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Rosiland S Rollins  
Primary Examiner  
Art Unit 3739

<b>Notice of References Cited</b>		Application/Control No.	Applicant(s)/Patent Under Reexamination LALONDE ET AL.	
		Examiner Rosiland S. Rollins	Art Unit 3739	Page 1 of 1

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-6,682,525	01-2004	Lalonde et al.	606/22
	B	US-6,383,180	05-2002	Lalonde et al.	606/22
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
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	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Substitute for form 1449A/PTO

APR 09 2004

SC102

INFORMATION DISCLOSURE  
STATEMENT BY APPLICANT

(use as many sheets as necessary)

Sheet

1

of

1

## Complete if Known

Application Number	10/764,661
Filing Date	1/26/2004
First Named Inventor	Jean-Pierre Lalonde, et al
Art Unit	Not yet Assigned
Examiner Name	Not yet Assigned

Attorney Docket Number 21819-42CONCON

## U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. <sup>1</sup>	Document Number Number- Kind Code <sup>2</sup> (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
RR		US-3,823,575	07/16/1974	Parel	
		US-3,859,986	01/14/1975	Okada, et al.	
		US-4,072,152	02/07/1978	Linehan	
		US-4,206,609	06/10/1980	Durenec	
		US-4,998,933	03/12/1991	Eggers, et al.	
		US-5,139,496	08/18/1992	Hed	
		US-5,243,811	06/13/1995	Imran, et al.	
		US-5,275,595	01/04/1994	Dobak, III	
		US-5,674,218	10/07/1997	Rubinsky, et al.	
		US-5,758,505	06/02/1998	Dobak, III; et al.	
		US-5,759,182	06/02/1998	Varney, et al.	
		US-5,800,493	09/01/1998	Stevens, et al.	
		US-5,807,391	09/15/1998	Wijkamp	
		US-5,860,970	01/19/1999	Goddard, et al.	
		US-6,051,019	04/18/2000	Dobak, III, et al.	
		US-6,190,378 B1	02/20/2001	Jarvinen	
		US-6,197,045 B1	03/06/2001	Carson	
		US-6,306,129 B1	10/23/2001	Little, et al.	

## FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No. <sup>1</sup>	Foreign Patent Document Country Code <sup>3</sup> - Number <sup>4</sup> Kind Code <sup>5</sup> (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T <sup>6</sup>
RR		EP 0 651 308 A1	03/05/1995	State of Israel Ministry of Defence		
		WO 98/29029	07/09/1998	Cryogen, Inc.		
		WO 99/56639	11/11/1999	Spembly Medical Limited		
		WO 99/56640	11/11/1999	Spembly Medical Limited		
		WO 99/56641	11/11/1999	Spembly Medical Limited		
		WO 00/35362	06/22/2000	Spembly Medical Limited		

Examiner Signature *R. Rollins*

Date Considered

7/11/05

<sup>1</sup>EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. <sup>2</sup>Applicant's unique citation designation number (optional). <sup>3</sup>See Kinds Codes of USPTO Patent Documents at [www.uspto.gov](http://www.uspto.gov) or MPEP 901.04. <sup>4</sup>Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). <sup>5</sup>For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>6</sup>Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. <sup>7</sup>Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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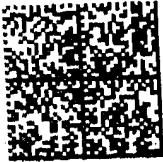
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